

New York State



Report of the Task Force on Regulation of Tax Return Preparers

Issued pursuant to the Laws of 2009, chapter 59, Part VV, § 4

For submission to
the Department of Taxation and Finance,
the Governor, and the Legislature

September 28, 2011

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The New York State Task Force on Regulation of Tax Return Preparers submits this Report to the Commissioner of Taxation and Finance, the Governor, the Speaker of the Assembly and the Temporary President of the Senate.

Overview

The starting point for the Task Force on Regulation of Tax Return Preparers is the enacted State budget of 2009. One set of its provisions, now found in section 32 of the Tax Law, established the State's current system for registration of preparers. A second set, found in article 24-C of the General Business Law, enhanced consumer protections as to refund anticipation loans (RALs) and refund anticipation checks (RACs). Another provision, set forth in Appendix A to this Report, directed the Commissioner of Taxation and Finance to convene the Task Force.

The system for registering tax return preparers is up and running. A statistical account of its early operations is set forth in Appendix B.

The provision establishing the Task Force called for it to include wide representation from relevant parts of the public and private sectors. It charged the Task Force with studying and making recommendations on a variety of issues as to effective regulation of tax return preparers. It required the Task Force to report "to the commissioner of taxation and finance, the governor, the speaker of the assembly and the temporary president of the senate no later than March 31, 2012." With this Report, the Task Force is meeting that requirement – well ahead of schedule.

The detailed recommendations of the Task Force are set forth in three sections of this report (pages 13 to 51). In sum, the Task Force is recommending:

- A set of minimum qualifications for tax return preparers, including requirements for:
 - Age and education
 - Competency examinations
 - Continuing professional education
- A comprehensive set of standards for tax return preparers, including:
 - Eligibility rules for registration applicants
 - Conduct standards for those who prepare returns for compensation
- For refund anticipation loans (RALs), certain measures to enhance:
 - Enforcement of existing provisions
 - Consumer education

After extensive study and with input from numerous industry and government stakeholders, the Task Force urges the Commissioner to take all necessary steps to implement or seek implementation of the recommendations set forth in this Report. We recognize that our recommendations are only the starting point for an implementation process that will likely require promulgation of new regulations by the Department of Taxation and Finance, participation by other governmental, educational, or private entities, and possibly new legislation. We are convinced that this is a process that the State should undertake.

The case for regulation is compelling. We are persuaded that the adoption of a strong, fair and efficient regulatory scheme is essential to advance tax administration, to elevate the professionalism of the tax return preparation industry, and to protect New York taxpayers. Tax return preparers perform a vital service for taxpayers and play a key role in our system of tax administration. It is time for the State to recognize that preparers ought to meet minimum qualifications to help ensure the sound performance of that critical function. So too, we believe taxpayers are entitled to the services of a preparer who is required to conform to a code of conduct designed to ensure the preparer's integrity and competence. It is the hope of this Task Force that the recommendations in this Report will provide a good starting point for discussion, formulation, adoption, and implementation of standards that will protect all New York taxpayers.

The Case for Regulation

In recent years, there has been an emerging consensus among policymakers, consumer advocates, and tax preparer industry participants about serious problems within the tax preparer industry and the impact of these problems on consumers of tax preparation and related services.

The problems take several forms. They range from deficiencies in the general quality of tax preparation services, stemming from limitations in knowledge and education of certain tax return preparers, to outright fraudulent conduct by a limited number of bad actors.

Awareness about these problems has developed over many years and has prompted both State and Federal governments to consider wholesale changes in the regulation of the tax preparation industry. At the same time that governments have taken notice of these issues, consumers have also reported a lack of confidence in the quality of the tax preparation services they receive. Given the vast numbers of taxpayers who utilize the services of tax return preparers, even a small proportion of poorly prepared returns can have serious consequences. For instance, taxes or tax return preparers may be overpaid, or taxpayers may underpay their taxes – with adverse consequences both for the State and for the taxpayers who may be subject to penalties and interest.¹

Various studies have reinforced the concerns of policymakers and consumers. In 2008, for example, the U.S. Government Accountability Office (GAO) conducted a limited review of tax returns prepared by commercial paid tax return preparers employed by national tax preparation chains. The GAO found that these returns often contained inaccuracies with significant tax consequences such as sizable unjustifiable refunds.²

Another 2008 study, this one by the Office of the Treasury Inspector General for Tax Administration (TIGTA), looked at the quality of tax preparation services provided by “unenrolled preparers.” Unenrolled preparers are unlicensed tax return preparers who lack recognized industry credentials such as those held by attorneys, certified public accountants

¹ U.S. Government Accountability Office, *Paid Tax Preparers: Most Taxpayers Believe They Benefit, but Some Are Poorly Served* (Washington, D.C.: [GAO-03-610T](#), April 1, 2003), pp. 6-9.

² U.S. Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (Washington, D.C.: [GAO-06-563T](#), August 15, 2008).

(CPAs), enrolled agents (EAs), or enrolled actuaries. Like the GAO study, the TIGTA study found that tax return preparers often made errors on tax returns. In fact, the study found that more than half (61 percent) of the limited sample of unenrolled preparers made errors. Over one third of these errors were deemed to have been willful or reckless omissions or misstatements.³

In addition to concerns about the general quality of tax preparation services, consumer groups have also long criticized financial products and services often associated with tax preparation services, particularly Refund Anticipation Loans/Checks (RALs/RACs). RALs are short-term loans to taxpayers that are secured by the consumer's federal tax refunds. RALs are typically utilized by lower-income taxpayers, particularly those who qualify for and receive the Federal earned income tax credit (EITC).⁴

Some tax return preparers have been found to have aided and abetted outright tax fraud. Beginning in 2007, the New York State Department of Taxation and Finance (DTF) commenced a statewide undercover investigation to determine if unscrupulous tax professionals were assisting their clients in perpetrating tax fraud. The DTF Office of Tax Enforcement reported that 51 out of 170 preparers visited over an almost three-year period – some 30 percent – actively offered to coach their clients in tax fraud efforts. This criminal behavior was observed in all manner of tax return preparers, ranging from unenrolled preparers to licensed CPAs.⁵

³Treasury Inspector General for Tax Administration (TIGTA), *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (Washington, D.C.: [2008-40-171](#), September 3, 2008).

⁴National Consumer Law Center, *Major Changes in the Quick Tax Refund Industry: The NCLC/CFA 2010 Refund Anticipation Loan Report* (Boston, M.A.: February 2010).

⁵Comiskey, William J., "Taking Aim at Tax Professionals Who Coach Their Clients to Cheat," *State Tax Notes*, 4 January 2010, pp. 33-38.

New York's Tax Preparer Registration Program

In response to the foregoing issues, then-Governor Paterson proposed legislation that would be enacted into law as Part VV of Chapter 59 of the Laws of 2009.⁶ The legislation required the electronic registration with the Department of certain tax return preparers and facilitators of RALs and RACs. The statute also included certain requirements and restrictions on tax return preparers and facilitators, with penalties for those who do not comply.

Tax return preparers who prepare at least one return for compensation in a calendar year must annually register electronically and receive a tax preparer registration certificate with a unique identification number. "Commercial tax return preparers" – those who prepare ten or more returns for compensation in the preceding calendar year and will prepare at least one return for compensation during the current calendar year, or will prepare ten or more returns for compensation in the current calendar year – must electronically pay an annual fee of \$100. Registration was required for those preparing personal income tax returns on or after December 31, 2009, and other tax returns on or after December 31, 2010. RAL/RAC facilitators must register, but do not pay the annual fee.

Several types of tax return preparers are not required to register. Attorneys, public accountants, certified public accountants and enrolled agents are excluded from the definition of tax return preparer. Employees of a law firm, public accounting firm, or enrolled agent firm who prepare returns under the supervision of the exempt tax return preparers in that firm are also excluded.

In late 2009, the Department put into operation a web-based tax preparer registration application for personal income tax return preparers accessed through the Department's Online Services web portal. In late 2010, the registration system went on-line and allowed preparers of other tax returns to register as well.

⁶ The statute has subsequently been amended twice. First, Chapter 503 of the Laws of 2009 excluded attorneys, public accountants, and certified public accountants registered or licensed by any state in the United States from the definition of a tax return preparer subject to the tax preparer registration program. It also amended the exclusion for employees of these persons working under their supervision (see [TSB-M-09\(16\)I](#)). Second, Chapter 242 of the Laws of 2010 similarly excluded enrolled agents from the definition of a tax return preparer subject to the tax preparer registration program (see [TSB-M-10\(6\)I](#)).

For calendar year 2010, over 63,000 tax professionals registered with the Department. Over 20,000 remitted the \$100 fee. Through July 20, 2011, the Department registered over 43,000 tax professionals, with over 17,000 remitting the fee.

Further selected statistics about the program are set forth in Appendix B.

The Tax Preparer Task Force

The legislation also required the Commissioner of the Department of Taxation and Finance to convene a Task Force to examine the need for additional oversight of tax return preparers. The Task Force's initial first meeting was held on November 30, 2009. Periodic meetings of the entire Task Force and individual Working Groups (discussed below) have continued since that time.

The Task Force has a diverse membership. State government representatives are from the Departments of Financial Services (formerly Banking), Education, and State, as well as the latter's Division of Consumer Protection (formerly the Consumer Protection Board) and the Office of Temporary and Disability Assistance. There is also participation by representatives from the New York City Department of Finance, the NYC Department of Consumer Affairs, and the Internal Revenue Service. Non-governmental representatives include individuals from the academic sector, the New York State Bar Association, the New York State Society of Certified Public Accountants, the New York State Society of Enrolled Agents, the National Association of Tax Professionals and other representatives of the tax return preparation industry.

As noted in the authorizing legislation, the main function of the Task Force is to prepare a report making recommendations to the Commissioner, the Governor, and the Legislature regarding the scope of the regulatory scheme and appropriate professional qualifications, including, but not limited to, minimum educational qualifications and continuing educational requirements for tax return preparers. The report is due no later than March 31, 2012.

The Task Force has subdivided its workload into three distinct Working Groups. The three groups focus on, respectively, tax preparer qualifications, conduct, and RALs/RACs.

The qualifications Working Group has compared and contrasted existing Federal and State tax preparer minimum qualifications, as well as recent significant changes in the Federal regulation of tax return preparers. The group has proposed minimum qualification requirements for New York commercial tax return preparers. These include minimum age and education requirements, as well as required competency testing and continuing education. The Working Group has also formulated additional guiding principles and recommendations for the administration of these proposed qualifications.

The Working Group on tax preparer conduct has formulated proposed recommendations on eligibility rules for all those tax return preparers who are currently required to register with New York State pursuant to the existing statute. In addition, the group has proposed standards of conduct that would apply to all individuals who prepare tax returns for compensation.

The third group has examined issues and potential abuses involving the offering of RALs and RACs to New York consumers. This group includes representatives of RAL/RAC providers as well as consumer advocates. Despite diverse opinions from the Working Group members, the group was able to coalesce around a consensus report that seeks to enhance consumer rights and education.

The reports of the Working Groups have been discussed with the entire Task Force. Input from the Task Force resulted in modification of the groups' proposals. The process ultimately resulted in Task Force adoption of all three sets of proposals as modified.

Other Systems of Tax Preparer Oversight

Federal Oversight

Until recently, the Federal government had taken a limited regulatory role concerning the vast majority of tax return preparers. Through its Office of Professional Responsibility (OPR), the Internal Revenue Service (IRS) enforced longstanding regulations governing the practice of attorneys, certified public accountants (CPAs), enrolled agents (EAs), enrolled actuaries and appraisers before the IRS. These regulations were contained in Treasury Department Circular No. 230.

OPR also oversees the testing and certification of enrolled agents. To become an EA, individuals must demonstrate tax competence through a written examination or on the basis of past technical experience. EAs have the privilege of representing taxpayers before the IRS. Like attorneys and CPAs, EAs are unrestricted as to which taxpayers they can represent, what types of tax matters they can handle, and the IRS offices before which they can practice. Like attorneys and CPAs, they were mandated to meet certain continuing education requirements.

OPR jurisdiction and the Circular No. 230 regulations applied to attorneys, CPAs and EAs, but did not extend to unenrolled preparers. These individuals were not permitted to practice before the IRS (other than in connection with returns they prepared), and were subject only to limited oversight by the IRS Compliance Division. However, the traditional regulatory role of IRS/OPR was to change significantly beginning in 2010. During 2009, the IRS held a number of public forums around the nation on the topic of tax preparer performance standards. Subsequent to these forums, in January 2010 the IRS announced a new regulatory initiative to extend registration, testing and continuing education requirements to tax return preparers not currently subject to formal oversight under Circular No. 230.⁷

The original IRS proposal underwent several changes. The essential elements of the new regulatory scheme are as follows:

- Beginning January 1, 2011, all paid preparers had to have a Preparer Tax Identification Number (PTIN) before preparing tax returns. Those who already have PTINs must renew their registrations. The cost of the PTIN is \$64.25 per year. Registrants not previously subject to the provisions of Circular No. 230 are henceforth also subject to the provisions of Circular No. 230, subpart B;
- Starting in mid-2011, registrants must pass an exam to demonstrate their competency to prepare Federal tax returns. Successful registrants then become Registered Tax Return Preparers. Active attorneys, CPAs, and EAs in good standing are exempt from the

⁷Internal Revenue Service, “IRS Proposes New Registration, Testing and Continuing Education Requirements for Tax Return Preparers Not Already Subject to Oversight” (January 4, 2010, [IR-2010-1](#)).

testing requirements, as are non-signing preparers who are employed by attorney or CPA/EA firms and preparers who do not prepare Form 1040 series returns;⁸ and

- Registered Tax Return Preparers must also complete annual continuing education requirements (to be announced later). The same individuals who are exempt from the testing requirement are also exempt from continuing education requirements.

State Oversight

Only three states have current statutes authorizing registration or regulatory oversight for all tax return preparers. These are Oregon, California and Maryland.

Oregon. Oregon was the first state to regulate all tax return preparers beginning in 1973 when the Oregon State Board of Tax Practitioners was created.⁹ The Board is funded by licensee fees and other miscellaneous services. Individuals who prepare, advise or assist in the preparation of personal income tax returns in Oregon for a fee, or represent that they do so, must be licensed. The Board has seven members. Six are Licensed Tax Consultants (LTCs) with at least five years tax preparation experience and one is a member of the general public not associated with the tax preparer profession. Members are appointed by the Governor for three-year terms and are subject to Senate confirmation. The Tax Board hires staff to administer all official business.

The unique feature of Oregon's program is that it employs a "two tier" licensing system. Licensed Tax Preparers (LTPs) hold an apprenticeship license that allows them to prepare Oregon personal income tax returns under the supervision of an LTC. LTCs have proven higher competency obtained through testing and experience to the point that a licensee may prepare taxes as a self-employed, independent or supervising tax practitioner. Oregon also requires businesses preparing personal income tax returns to be registered in addition to the LTP/LTC requirements for individual tax return preparers. All tax preparation businesses must be registered and must have an LTC providing services and/or supervising licensed tax preparers.

⁸These individuals must be employed by firms at least 80 percent owned by attorneys, CPAs, or enrolled agents, and be directly supervised by an attorney, CPA, or EA.

⁹See Oregon Revised Statutes (ORS) Chapter 673. For more information regarding the Oregon Board of Tax Practitioners, see its [website](#).

California. The California Tax Education Council was established in 1997. The group is a private industry association made up of appointees from tax preparer membership associations and tax preparation corporations.¹⁰ In California, any person who charges a fee to assist with or prepare a State or Federal tax return, or assume responsibility for such a return, or who offers these services must be licensed. CPAs, Attorneys, EAs and anyone employed by these individuals are generally exempt from these requirements.

In order to become a California Registered Tax Preparer (CRTP) and begin working, an individual must first complete 60 hours of qualifying tax education. After they become a CRTP, they must also complete 20 hours of continuing tax education each year. Every CRTP must also maintain a \$5,000 tax preparer bond. A major focus of the Council is tax preparer education, and the group publishes a list of approved curriculum providers. It also issues statements of completion and compliance that verify preparers have met tax education requirements and have provided valid bonding information.

Maryland. Maryland enacted its tax preparer licensing law in 2008. At this time, the Maryland registration program and licensing requirements have not been implemented. However, the authorizing statute empowers the Board of Individual Tax Preparers to register persons seeking to function as an individual tax preparer. Board registration and the successful completion of an examination are necessary. As in other states, attorneys, CPAs, EAs and supervised employees are exempt from these requirements. The Board is comprised of eight members with the advice of other state officials. One member is a consumer advocate while the others include an experienced commercial tax preparer, as well as representatives of various professional associations (e.g., attorneys, CPAs, EAs).¹¹

The section of this report containing the Task Force recommendations as to qualifications includes a table, starting on page 16, that provides a comparative view of key features of the various federal and state tax preparer registration and licensing programs.

¹⁰See Chapter 14, California Business and Professions Code §§22250-22259. For more information regarding the California Tax Educational Council, see its [website](#).

¹¹ See Individual Tax Preparers, Title 21 of the Maryland Code Business Occupations and Professions. For more information regarding the Maryland State Board of Individual Tax Preparers, see the Department of Labor, Licensing and Regulation, Division of Occupational and Professional Licensing [website](#).



Recommendations of the Task Force

The following sections set out the recommendations of the Task Force in the areas of tax preparer qualifications, tax preparer conduct, and RALs and RACs. The Task Force formed subcommittees as Working Groups for each of these three areas. These three Working Groups did background research, deliberated, and formulated initial recommendations. Those initial proposals were discussed with the Task Force as a whole, which sent input back to the Working Groups. This process continued over several meetings of the Task Force. The products of the Working Groups were repeatedly considered, debated and refined until they achieved the consensus support of the Task Force.

Recommendations of the Task Force on Regulation of Tax Preparers

Section 1

Qualifications of Tax Preparers

Background

The Working Group on Qualifications was charged with considering what if any minimum professional standards should apply to tax preparers. The Working Group considered standards in a number of areas such as prior education, testing, and continuing professional education. As a starting point, the Working Group reviewed existing standards in the few United States jurisdictions that have them. Those standards are summarized in Table 1, starting on page 16. That table provides a comparative view of key features of the current federal and state programs for licensure or registration of tax preparers, including the existing, limited registration requirements in New York State.

The task of the Working Group was to determine whether and how a minimum set of requirements could be both reasonable and effective. Standards that create undue barriers to working in the field of tax preparation would not be reasonable. Standards would not be effective unless they help ensure that those working in this field are well suited to prepare returns competently and honestly. The Qualifications Working Group strove to balance such considerations. Some of its initial approaches were re-worked based on conversations with the Task Force as a whole. Ultimately the Task Force adopted the following recommendations for required qualifications, and for principles to guide administration of those requirements.

Recommendations as to Qualifications

The Task Force proposes the following additional qualifications for commercial tax return preparers (those who prepare 10 or more returns annually for compensation) who prepare NYS personal income tax returns. These qualifications would be in addition to the existing statutory registration requirements. Such preparers would have to:

- Meet the IRS requirements, including passing the competency exam.
- If new to the field of NYS personal income tax, take a 16-hour basic New York income tax course prior to preparing returns for compensation. Experienced preparers, as defined by the Commissioner of Taxation and Finance, would not be required to take this course.
- Pass a New York State income tax competency exam prior to preparing returns for compensation. Experienced preparers would be allowed to take and pass the exam within a 3-year phase-in period.
- Annually participate in 4 hours of continuing professional education (CPE) in New York personal income tax topics, in addition to the IRS requirement.
- Be at least age 18 and a high school graduate or equivalent (G.E.D).

Commercial tax return preparers who prepare NYS income tax returns but are located outside New York State would have to comply with these requirements.

The Task Force developed additional guiding principles for administration of these requirements:

- The Department of Taxation and Finance should enroll all tax return preparers in its subscription services mailing list as they register on-line.
- New York State's regulation of tax preparers should build on and complement the IRS initiative to regulate tax preparers. Duplicative requirements should be avoided.
- The IRS initiative requires all compensated preparers to register, even if they are members of other regulated professions, while the current New York registration program exempts public accountants, CPAs, attorneys, and enrolled agents. In light of the new

IRS initiative, the Legislature should consider whether ending these exemptions from registration would serve the overall purposes of the program.¹²

- The Department should work with the IRS and other states to share tax preparer information and identification numbers as much as possible, in order to make registration and testing processes easy and efficient. A single, seamless registration system should be the goal for the future.
- The Department should maintain a public database so that anyone can check whether a particular tax preparer has met the minimum qualifications and has registered.
- Administrative costs are an important consideration, both to tax preparers and to New York State.
- The Department should insure that cost-effective CPE is available to preparers, using new technology where appropriate.
- The Department should annually provide information about the most common issues and mistakes made on personal income tax returns.
- The Department should use available data to analyze patterns and identify preparers who are not doing what they are supposed to do.
- The Department needs to learn more about the population of preparers who operate in New York, the types of returns they prepare, the types of clients they serve, and the characteristics of their business models.
- The Department should gain experience in administering testing and educational requirements for income tax preparers before expanding these requirements to preparers of other types of returns.
- Volunteer tax preparers should be encouraged to participate in continuing education activities.

¹² One participant in the Task Force process, David Moynihan, has asked that this Report note his disagreement with this recommendation.

Comparison of Existing Oversight Programs

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs					
Category	Current NYS Law	IRS	Oregon	California	Maryland
Who is required to register and meet these qualifications?	<p>A tax return preparer is an individual who prepares a substantial portion of any return for compensation. All tax return preparers who prepare at least one return in a year are required to register.</p> <p>A "commercial tax return preparer" must pay an annual fee to register.</p> <p>(For 2010, the law only applied to preparers of personal income tax returns. For 2011, it applies to all preparers.)</p> <p>A facilitator of a refund anticipation loan or check must register.</p>	<p>All individuals who are compensated for preparing, or assisting in the preparation of, all or substantially all of a federal tax return or claim for refund.</p>	<p>Those who prepare personal income tax returns for a fee or represent that they do so.</p> <p>Applies to out of state preparers who solicit Oregon clients through such activities having an agent in Oregon, having a "drop-off location" in Oregon, or by advertising in Oregon-based publications - including Oregon area phone books.</p>	<p>Any person who, for a fee, assists with or prepares tax returns.</p> <p>Tax returns include state or federal income taxes or state bank and corporate franchise taxes.</p>	<p>All persons offering individual tax preparation services.</p>

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs					
Category	Current NYS Law	IRS	Oregon	California	Maryland
Who is exempt from these requirements?	Attorneys CPAs PAs Enrolled Agents Supervised employees of the exempt tax preparer Volunteer tax preparers Employees of a business who prepare returns for that business Employees who provide only clerical or comparable services	Attorneys, CPAs and enrolled agents must register and pay the registration fee, but they are exempt from the requirement to take the exam and complete continuing education (they are subject to their own professional licensing requirements)	Attorneys CPAs PAs Supervised employees Fiduciaries	Attorneys CPAs Enrolled Agents Supervised employees	Attorneys CPAs Enrolled Agents Supervised employees
Minimum age	N/A	N/A	18	18	18
Minimum education	The Task Force is directed to address this issue in its report to be completed by 3/31/2012. The Commissioner may promulgate regulations to implement any of the recommendations made by the Task Force.	N/A	High school graduate or equivalent (G.E.D)	N/A	High school graduate

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs					
Category	Current NYS Law	IRS	Oregon	California	Maryland
Required for tax preparers entering the field		Exam required	80-hour basic course in income tax Exam required – must achieve 75%	60 hour course in personal income tax including 45 federal and 15 state	Exam required
Required qualifications in federal taxation		See above	See above	See above	See above
Required for current/experienced tax preparers		Must pass exam within 3 years.	780 hours of experience required for licensing as a consultant. Enrolled Agents may become a consultant by passing only the Oregon portion of the exam.	An individual with a minimum of 2 recent years of experience in personal income taxes may petition the Council to substitute experience for the 60 hour course.	Exam is waived for preparers with 15 years of experience

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs

Category	Current NYS Law	IRS	Oregon	California	Maryland
Are there multiple levels of licensing?	Current law distinguishes between "Tax Return Preparers" and "Commercial Tax Return Preparers."	<p>Yes – At least 2 exams will be offered.</p> <p>-Wage and non-business 1040</p> <p>-Wage and small business 1040</p> <p>For 1040 series returns, preparers will be limited to preparing the returns they have successfully tested on.</p> <p>The IRS plans to add a test on business tax rules.</p>	<p>Yes – two licenses:</p> <p>-Preparer (apprenticeship, must work under the supervision of a consultant)</p> <p>-Consultant</p> <p>Tax Business must register</p>	No	No
Continuing education requirement	The Task Force is directed to address this issue in its report to be completed by 3/31/2012. The Commissioner may promulgate regulations to implement any of the recommendations made by the Task Force.	15 hours annually (2 hours ethics, 3 hours new tax law, 10 hours other topics)	15 hours annually in personal income tax	<p>20 hours annually (12 federal, 4 California, 4 either)</p> <p>Planning to conform requirements to IRS.</p>	16 hours over 2 years

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs

Category	Current NYS Law	IRS	Oregon	California	Maryland
Other requirements		<p>IRS public database will include the preparers who have passed the competency exam.</p> <p>IRS will conduct tax compliance checks on all preparers.</p>	Public database	<p>\$5,000 bond required</p> <p>Public database</p>	
Fees	<p>Commercial tax return preparers must pay \$100 annually to register.</p> <p>A commercial tax return preparer is an individual who prepares 10 or more returns for compensation in the preceding calendar year and will prepare at least one return for compensation during the current calendar year or will prepare ten or more returns for compensation in the current calendar year.</p>	\$64.25 annually (although amount may change in future years based on cost of program).	<p>Preparer: \$80/\$155 with Bus. Reg.</p> <p>Consultant: \$95/\$155 with Bus. Reg.</p> <p>Business Reg: \$110</p>	\$25 annually	Yes

Table 1: Comparison of Federal and State Tax Preparer Registration/Licensing Programs

Category	Current NYS Law	IRS	Oregon	California	Maryland
Administrative	Registration is accomplished through an online registration system hosted via the Department's website	Vendor will operate the online system. Testing will be done by an external vendor. IRS approves continuing ed providers	Oregon Board of Tax Practitioners develops and administers the test (7 members, appointed by Governor, funded by license fees). Courses offered by private tax schools and community colleges	California Tax Education Council administers the program (private industry association funded by license fees and run by private company). CTEC approves education providers.	Maryland Board of Individual Tax Preparers is responsible for the program. It operates under the Department of Labor, Licensing and Regulation.

Recommendations of the Task Force on Regulation of Tax Preparers

Section 2

Standards of Eligibility and Conduct for Tax Preparers

Background

This Report's section on The Case for Regulation discusses the extent of the problems that have been observed among a significant number of tax preparers. These include shortfalls in competence and shortfalls in integrity. The Working Group on Standards focused on how best to address those problems with an appropriate set of standards to govern (a) eligibility for registration as a tax preparer, and (b) tax preparer conduct. The group drew on existing, time-tested models, such as IRS Circular 230 and various provisions of New York State law regulating other professions. The Working Group discussed over a dozen drafts, both internally and with the Task Force as a whole, until consensus emerged. Its proposed standards were adopted by the Task Force and are set forth in the pages that follow.

The Task Force recommendations in this area are addressed only to the substance of appropriate standards. The Task Force did not deliberate at length, nor does it make detailed recommendations in this report, about the processes by which such standards should be implemented, or by which potential violations of the standards should be monitored, alleged, adjudicated, or sanctioned. However, there was a consensus on the Task Force that any scheme of sanctions should include an appropriate set of due process protections, including an independent administrative and judicial review process, that – while not so cumbersome as to preclude effective application of the standards – is sufficiently robust to ensure that anyone who may face sanction receives a full and fair opportunity for defense against any allegations and for review of any adverse determinations. The Task Force believes that these protections should be adopted at the same time as any provisions that would allow any sanction for violation of the standards.

The formulation of appropriate due process protections should be accompanied by careful consideration of how the functions of monitoring tax preparer conduct and enforcing the standards should be structured and staffed, so as to ensure an effective and fair administration of the proposed code of conduct. This should include strong consideration of ways to give the standards enforcement process a reasonable degree of independence from the regular enforcement processes of tax determinations.

Recommendations as to Eligibility and Conduct

The standards¹³ proposed by the Task Force are set forth in two parts. The first set of standards would govern eligibility for registration as a tax preparer under Tax Law §32(14). These standards would not apply to the professional groups exempt, under current law, from the registration requirement, namely, public accountants and CPAs, attorneys, and enrolled agents. (The Task Force is recommending that the Legislature consider whether those exemptions should be continued. See p. 14 above.)

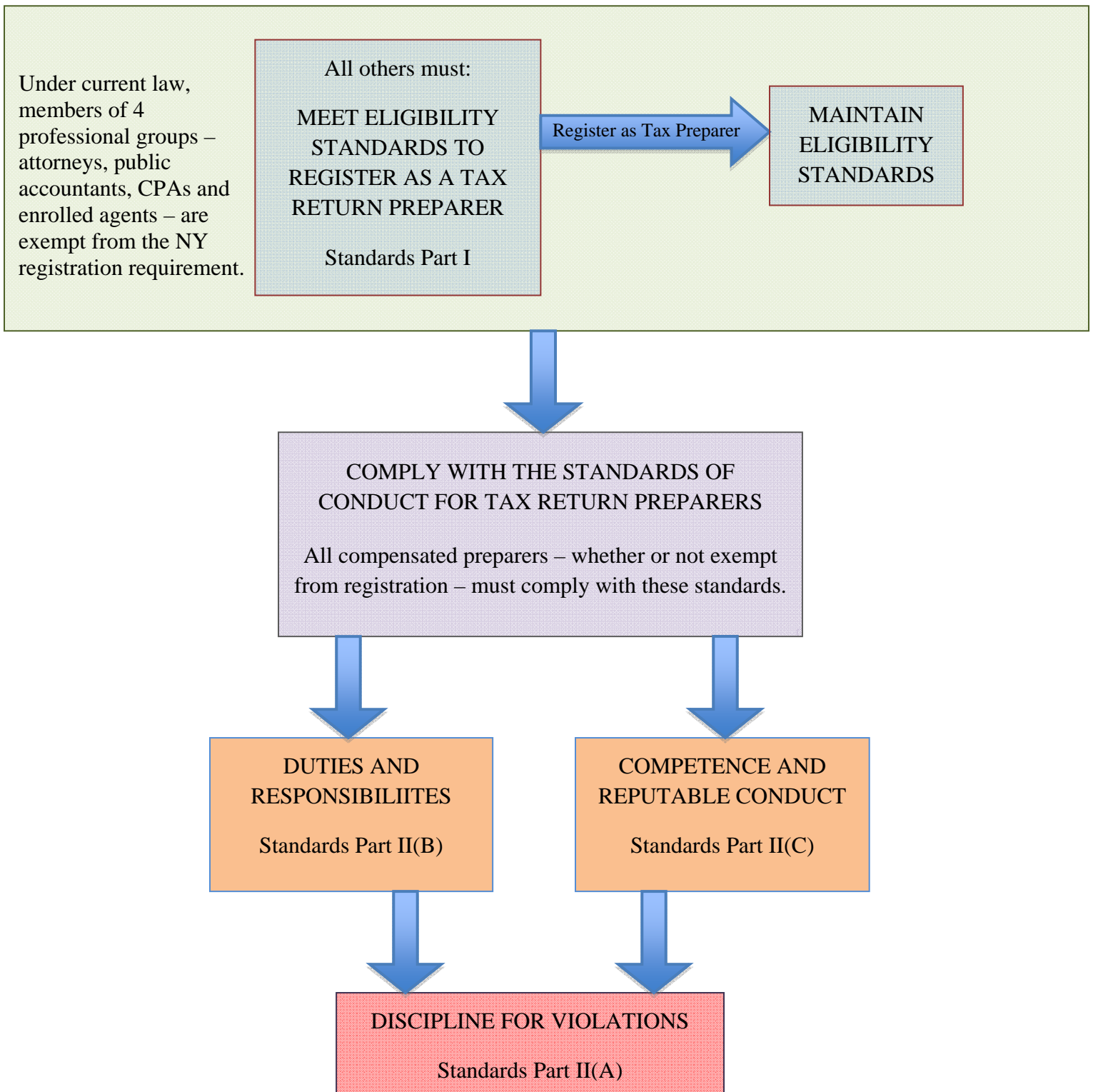
The second set of standards would govern conduct of all compensated tax preparers, whether or not they are subject to a registration requirement.¹⁴ These standards address basic duties and responsibilities of tax preparers, competence, and reputable conduct.

The relationship between the two sets of standards and the groups to which they apply is illustrated in the flowchart on the next page. The set of proposed standards being recommended by the Task Force – including those governing eligibility for registration and those governing conduct of compensated preparers – is then set out in full, immediately following the flowchart.

¹³ The word “standards” in this section refers to conduct standards and disqualifying factors. Another kind of standard, relating to professional and other affirmative qualifications, is treated under Section 1 of the recommendations.

¹⁴ One participant in the Task Force process, David Moynihan, has asked that it be noted that he has not joined in the recommendation that the proposed standards of conduct apply to all compensated tax preparers including those not currently subject to the registration requirement.

Flowchart of proposed tax preparer standards



Standards for Preparers of New York Tax Returns

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Part I: Standards of eligibility for registration as a tax return preparer

§ 1 Issuance of registrations

The commissioner of taxation and finance may refuse to issue a tax return preparer registration to an applicant, or may issue a registration subject to conditions and limitations, when the commissioner ascertains the existence of any of the following circumstances:

(a) Noncompliance with tax obligations

The applicant has failed to comply fully with his or her own federal, state or local tax obligations in timely fashion, including but not limited to failing to file any required tax return or report, or unreasonably failing to pay or make acceptable arrangements to pay any tax finally due and owing under the Tax Law.

(b) Criminal convictions

The applicant has been convicted of any federal or state offense and there is a direct relationship between the criminal offense or offenses for which the applicant was convicted, or the conduct underlying those offenses, and tax return preparation practice; or the issuance of the registration would involve an unreasonable risk to property, safety or welfare of specific individuals or the general public and the Commissioner has given due consideration to the factors set forth in Corrections Law Section 753.

(c) Adverse disciplinary actions

The applicant has, within the preceding five years, been the subject of any adverse finding, settlement imposing compliance terms, or sanction by any federal, state or local agency or other disciplinary or licensing organization or board in any administrative action in connection with conduct relating to tax return preparation or involving dishonesty or fraud, a violation of trust or of fiduciary obligations, or misuse of confidential information, or the tax return preparer has failed to comply with his or her child support obligations and a court has issued an order to the Department of Taxation and Finance pursuant to § 458-b of the Family Court Act.

(d) Willful violation of the Tax Law

The applicant has willfully violated, or conspired with or willfully aided or counseled another to violate, any provision of the Tax Law or any regulation promulgated by the commissioner.

(e) Fraud or deceit as a preparer

The applicant has engaged in fraud or deceit in connection with his or her tax return preparation activities or in connection with his or her application to register as a tax preparer.

(f) Dishonest or unscrupulous behavior

The applicant has engaged in acts of dishonesty, fraud, deceit or other unscrupulous conduct of such character that the applicant has failed to demonstrate sufficient trustworthiness to be a tax return preparer.

(g) Failure to register or pay registration fee

The applicant has failed to fully and truthfully complete the registrant application, pay any required registration fee or fully and truthfully respond to any lawful inquiries of the Department in connection with that application.

Part II: Standards of conduct for those who prepare tax returns for compensation

Sub-part II(A): General provisions

§ 2 Discipline

(a) Grounds for discipline

- (i) Grounds for discipline exist when the Commissioner determines that an individual who has prepared a tax return for compensation has been shown
 - a. to be incompetent or disreputable within the meaning of section 6 below;
 - b. to have willfully, recklessly or with gross incompetence failed to comply with any regulation of this part governing the conduct of individuals who prepare tax returns for compensation or any other applicable regulation or statute governing the conduct of individuals who prepare New York tax returns; or
 - c. with intent to defraud, to have willfully and knowingly misled or threatened a client or prospective client.
- (ii) The best practices set forth in § 5(k) are statements of practices for all tax preparers to aspire to achieve. A violation of a best practice defined in this

subsection of Part II will not alone constitute an act of misconduct by the preparer sufficient to support a disciplinary action.

(b) Forms of discipline

When there are grounds for discipline under subdivision (a), then

- (i) the Commissioner may suspend or cancel the registration, if any, issued to the preparer pursuant to Tax Law §32(14); and
- (ii) whether the preparer is registered or not, the Commissioner may deny the preparer the right to prepare or file, or impose limitations or conditions on the preparer's ability to prepare or file, New York tax returns in the future. Such conditions may include placing the preparer on probation, or ordering the preparer to attend remedial educational classes before being allowed again to prepare or file New York returns.

(c) Who is covered by the standards

The code of conduct set forth in Part II of these standards shall apply to any individual who prepares a substantial portion of any return filed with the Department for compensation, even if that individual is not required to register as a tax return preparer pursuant to Tax Law §32(14). Attorneys, public accountants, certified public accountants, enrolled agents and their employees who prepare a substantial portion of a New York tax return are among those covered by these standards. Provided, however, that nothing in the standards are intended and should not be construed to govern the conduct of attorneys, public accountants, certified public accountants, enrolled agents and their employees in connection with their practice or appearance before the Department regarding a return they did not prepare, or to govern any conduct of such persons that is unrelated to the preparation of the return. A reference in Part II of these standards to a "preparer" or to a "tax return preparer" is a reference to both registered tax return preparers under Tax Law §32(14) and to any other individual who for compensation has prepared a substantial portion of any tax return filed with the Department.

§ 3 Definitions

(a) Reckless conduct

Reckless conduct is a highly unreasonable action, omission or misrepresentation involving an extreme departure from the standards of ordinary care that a tax return preparer should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a preparer acted knowingly, recklessly, or through gross incompetence.

(b) Gross incompetence

Gross incompetence includes conduct that reflects gross indifference, tax return preparation or tax practice that is grossly inadequate under the circumstances, or a consistent failure to perform obligations to the client.

Sub-part II(B): Duties and responsibilities of tax return preparers

§ 4 Information to be furnished to the Department

(a) Available records

A preparer must, on a proper and lawful request by a duly authorized officer or employee of the Department, promptly submit records or information in any matter before the Department related to a return prepared by the preparer unless the preparer believes in good faith and on reasonable grounds that the records or information are privileged or otherwise not subject to compulsory production pursuant to subpoena.

(b) Unavailable records

Where the requested records or information are not in the possession of, or subject to the control of, the preparer or the preparer's client, the preparer must promptly notify the requesting officer or employee and the preparer must provide any information that the preparer has regarding the identity of any person who the preparer believes may have possession or control of the requested records or information. The preparer must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the preparer is not required to make inquiry of any other person or independently verify any information provided by the preparer's client regarding the identity of such persons.

(c) Interference

A preparer may not interfere, or attempt to interfere, with any proper and lawful effort by the Department, its officers or employees, to obtain any record or information in connection with a return prepared by the tax return preparer unless the preparer believes in good faith and on reasonable grounds that the record or information is privileged or not otherwise subject to compulsory production by subpoena.

§ 5 Preparation of tax returns and other submissions to the Department

(a) Knowledge of client's omission

A preparer who, having been retained by a client with respect to a matter administered by the Department, knows that the client has not complied with the revenue laws of the United States or any state or local government or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States or any state or local government, must advise the client promptly of the fact of such noncompliance, error, or omission. The preparer must advise the client of the consequences as provided under the applicable federal, state or local laws and regulations of such noncompliance, error, or omission. A preparer who knows that a return or document that has been prepared for filing contains an error or omission, cannot sign, submit or file that return or document with the Department, by electronic means or otherwise.

(b) Diligence as to accuracy

- (i) In connection with any return prepared by the preparer, the preparer must exercise due diligence
 - a. in preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating the return;
 - b. in determining the correctness of oral or written representations made by the preparer regarding the return to the Department; and
 - c. in determining the correctness of oral or written representations made by the preparer to clients with reference to any matter administered by the Department in connection with the return.
- (ii) A preparer will be presumed to have exercised due diligence for purposes of this subdivision if the preparer relies on the work product of another person and the preparer used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the preparer and the person.

(c) Prompt disposition of pending matters

A preparer may not unreasonably delay the prompt disposition of any matter before the Department relating to a return prepared by the preparer.

(d) Assistance from or to barred or suspended tax return preparers

A preparer may not directly or indirectly, knowingly accept assistance from or assist any person who has been barred or suspended as a tax return preparer in New York if the assistance relates to the preparation of a tax return.

(e) Fees, notaries and check cashing

- (i) *Fees.* A preparer may not charge an unconscionable fee in connection with any matter before the Department relating to a return prepared by the preparer.
- (ii) *Notaries.* A preparer may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the department and for which he or she is employed as a tax return preparer.
- (iii) *Negotiating taxpayer checks.* A tax return preparer may not endorse or otherwise negotiate any check issued to a client by the government in respect to a federal, state or local tax refund.

(f) Return of client's records

- (i) In general, a preparer must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her federal, state or local tax obligations. The preparer may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the preparer of his or her responsibility under this section.
- (ii) For purposes of this section, records of the client include all documents or written or electronic materials provided to the preparer, or obtained by the preparer in the course of the preparer's representation of the client, that preexisted the retention of the preparer by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the preparer) at any time and provided to the preparer with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the preparer, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current federal, state or local tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the preparer or the preparer's firm, employees or agents if the preparer is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

(g) Conflicting interests

- (i) Except as provided by paragraph (ii) of this subdivision, a preparer shall not prepare a return for a client or represent a client before the Department in a matter involving a return prepared by the preparer if the preparer's involvement in the matter involves a conflict of interest. A conflict of interest exists if
 - a. The representation of one client will be directly adverse to another client; or
 - b. There is a significant risk that the representation of one or more clients will be materially limited by the preparer's responsibilities to another client, a former client or a third person, or by a personal interest of the preparer.
- (ii) Notwithstanding the existence of a conflict of interest under paragraph (i) of this subdivision, the preparer may prepare a return or represent a client in connection with a return prepared by the preparer if
 - a. The preparer reasonably believes that the preparer will be able to provide competent and diligent representation to each affected client;
 - b. The representation is not prohibited by law; and
 - c. Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the preparer. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 90 days. Copies of the written consents must be retained by the preparer for at least 36 months from the date of the conclusion of the representation of the affected clients, and must be provided to any officer or employee of the Department on request.

(h) Tax returns, affidavits and other documents

- (i) Submission of tax returns and other documents to the Department
 - a. A preparer may not take a frivolous position or advise a client to take a frivolous position on a tax return, affidavit, or other paper or electronic submission submitted to the Department.
 - b. A preparer may not advise a client to submit a tax return, affidavit, or other paper or electronic document to the Department, if in connection with the document,
 - (1) The purpose is to delay or impede the administration of federal, state or local tax laws;
 - (2) The document or return contains a position that is frivolous; or
 - (3) The document or return contains or omits information in a manner that demonstrates an intentional disregard of a statute, regulation or established

case law unless the preparer also advises the client to submit a document that evidences a good faith challenge to the statute, regulation or established case law.

(ii) Advising clients on potential penalties

a. A preparer must inform a client of any penalties that foreseeably are reasonably likely to apply to the client with respect to

(1) A position taken on a tax return if

(A) The preparer advised the client with respect to the position; or

(B) The preparer prepared or signed the tax return; and

(2) Any tax return, affidavit, or other paper or electronic document prepared or signed by the preparer and submitted to the Department.

b. The preparer also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(iii) Relying on information furnished by clients. A preparer advising a client to take a position on a tax return, document, affidavit or other paper or electronic submission to the Department, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The preparer may not, however, ignore the implications of information furnished to, or actually known by, the preparer, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(i) Requirements for other written advice

A preparer must not give written advice (including electronic communications) concerning one or more federal, state or local tax issues if the preparer bases the written advice on unreasonable factual or legal assumptions (including assumptions as to future events), unreasonably relies upon representations, statements, findings or agreements of the taxpayer or any other person, does not consider all relevant facts that the preparer knows or should know, or, in evaluating a federal, state or local tax issue, takes into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be resolved through settlement if raised. All facts and circumstances, including the scope of the engagement and the type and specificity of the advice sought by the client will be considered in determining whether a preparer has failed to comply with this section.

(j) Solicitation and advertising

A preparer may not, with respect to conduct as a tax return preparer, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, deceptive, misleading or coercive statement or claim.

(k) Best practices

Tax return preparers should provide clients with the highest quality representation concerning federal, state and local tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Department. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

- (i) Communicating clearly with the client regarding the terms of the engagement. For example, the preparer should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.
- (ii) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.
- (iii) Advising the client regarding the import of the conclusions reached.
- (iv) Acting fairly and with integrity in practice before the Department.

The best practices set forth in this subdivision are statements of practices for all tax preparers to aspire to achieve. A violation of a best practice defined in this subdivision will not alone constitute an act of misconduct by the preparer sufficient to support a disciplinary action but such a violation, especially if indicative of a pattern of conduct, may be considered in determining whether a disciplinary rule set forth in the other sections of these standards has been violated.

Sub-part II(C): Incompetence and disreputable conduct

§ 6 Incompetence and disreputable conduct

Incompetence and disreputable conduct for which a tax return preparer may be sanctioned includes, but is not limited to:

(a) Criminal convictions

Conviction of any federal or state criminal offense when there is a direct relationship between the criminal offense or offenses for which the applicant was convicted, or the conduct underlying those offenses, and tax return preparation or tax practice; or when issuance or continuation of the tax return preparer's registration, or continuing to permit the preparer to appear before the Department, would involve an unreasonable risk to property, safety or welfare of specific individuals or the general public and the Commissioner has given due consideration to the factors set forth in Corrections Law Section 753.

(b) Adverse disciplinary actions

Being the subject of any adverse finding, settlement imposing compliance terms, or sanction by any federal, state or local agency or other disciplinary or licensing organization or board in any administrative action in connection with conduct relating to tax return preparation or tax practice or involving dishonesty or fraud, a violation of trust or of fiduciary obligations, or misuse of confidential information, or the tax return preparer has failed to comply with his or her child support obligations and a court has issued an order to the department pursuant to § 458-b of the Family Court Act.

(c) False or misleading information or submissions

Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department or any officer or employee thereof, or to any tribunal authorized to pass upon tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, federal, state or local tax returns, financial statements, applications, registrations, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(d) Willful noncompliance with tax obligations

Willfully failing to comply fully with his or her own federal, state or local tax obligations in timely fashion, including but not limited to failing to file any required tax return or report, or failing to pay, or make acceptable arrangements to pay, any tax due and owing under the Tax Law or applicable regulations, or willfully and illegally evading, attempting to illegally evade, or participating in any way in illegally evading or attempting to illegally evade any assessment or payment of any federal, state or local tax obligation.

(e) Assisting noncompliance or tax evasion

Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any federal, state or local tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal, state or local taxes or payment thereof.

(f) Misappropriating client funds

Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the federal or any state or local government.

(g) Improperly influencing official actions

Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Department by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(h) Aiding practice by non-registered, suspended or barred preparers

Hiring, employing or otherwise aiding and abetting another person to engage in the practice of tax return preparation, when the preparer knew, or should have known, that such other person was not registered as a tax return preparer in a jurisdiction in which such person was legally required to be registered or when that person's registration as a tax return preparer has been suspended or revoked.

(i) Contemptuous conduct

Engaging in contemptuous conduct in connection with a return prepared by the preparer or in practice before the Department regarding that return, including the use of abusive language, making false accusations or statements to the Department, knowing them to be false, or circulating or publishing malicious or libelous matter.

(j) False and misleading opinions

Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under federal, state, or local tax laws. False opinions described in this paragraph include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material

facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph, reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a preparer should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a preparer acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, tax return preparation or tax practice which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(k) Willful failure to sign a return

Willfully failing to sign a tax return prepared by the preparer when the preparer's signature is required by federal, state or local tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(l) Disclosure of confidential information

Willfully or recklessly disclosing or otherwise using a tax return or tax return information in a manner not authorized by federal or state law or otherwise disclosing confidential information obtained in the course of a professional engagement unless such disclosure was with the consent of the client, in the course of dealing with tax authority, as required by law, or otherwise permitted under relevant professional standards.

(m) Willful violation of the law

Willfully violating, or conspiring with or aiding or counseling another to violate any provision of the Tax law or any regulation promulgated by the commissioner or any other applicable law or regulation governing the conduct of tax return preparers in New York, including, as applicable, the provisions of section 372 of the General Business Law regarding the Consumer Bill of Rights Regarding Tax Preparers.

(n) Failure to register, pay required fee, or complete educational requirements

If required by law, failing to register timely as a tax preparer, pay the tax preparer registration fee, or complete any educational requirements imposed on such individuals in New York.

(o) False or misleading representations

Willfully using false or misleading representations to procure employment or intimating that the preparer is able to improperly obtain special consideration or action from the Department or any officer or employee thereof.

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Section 3

Refund Anticipation Loans and Checks (RALs and RACs)

Background

The area of RALs and RACs was a particularly difficult one in which to agree on appropriate recommendations. First, it was one of the most contentious areas before the Task Force, and it was hard to forge consensus. Second, the effect of federal pre-emption significantly limits the possible range of State regulatory action. Nonetheless, the Working Group ultimately arrived at a set of recommendations that the Task Force was able to adopt on a consensus basis. Those recommendations are set forth in the next section.

This section focuses on the deliberations that led up to those recommendations. The area of RALs and RACs is factually and legally complex, and it is important that the deliberations – based on which consensus was reached despite the presence of strong and conflicting views on important issues – be described in their fully nuanced form. Accordingly, the Task Force decided that the Working Group’s report should be incorporated into this report in its entirety. That report follows.

The RAL/RAC Working Group Report to the Tax Preparers Task Force

History

The RAL/RAC Working Group met via conference call on several occasions since it was commissioned with the task of “examining issues and abuses involving refund anticipation loans and checks and considering any other matters the task force determines to be necessary or appropriate” (Chapter 59 of the Laws of 2009, Part VV, set out in App. A). The Working Group membership is comprised of private industry, and State and local agencies, including those in the consumer protection arena. The varied orientations, expertise and interests of the Group’s membership produced many occasions where members simply did not agree. Thus, the intention of the following report is to provide an objective overview of the RAL/RAC industry, including both industry and consumer concerns and data.

Caveat: *The recommendations set forth in this report do not necessarily represent the views of any particular participating individuals or organizations regarding the need for additional regulation and oversight of paid tax return preparation or tax-refund related products made available in the State.*

Context

Much of the State’s assistance to low and middle income residents is accomplished via refundable personal income tax credits, including the Earned Income Tax Credit (EITC), child and dependent care credit and empire state child credit. In December 2008, the Department of Taxation and Finance (DTF), the Office of Temporary and Disability Assistance (OTDA), the Department of Banking, the Consumer Protection Board (CPB) and the Department of Labor (DOL) established the Cross-Agency EITC Action Team to coordinate efforts to provide better services to low income taxpayers. In their initial report the Team found that as the use of the tax system to deliver benefits has increased, so has the number of unscrupulous tax preparers who overcharge low-income taxpayers for filing simple refund claims and provide costly refund anticipation loan (RALs). RALs are not made against State tax refunds, only federal refunds. Nonetheless, the Team found that thousands of New Yorkers lose out on valuable tax benefits because of costly tax preparation services and refund settlement products, including RALs.

According to the IRS 2010 data, an E-filed return with a direct deposit to the taxpayer’s account was made available within 8-15 days. Likewise, an E-filed return with a paper check to the taxpayer was sent to the taxpayer within 15-22 days.¹⁵ It should be noted that the IRS does not guarantee refund times.

¹⁵ See <http://www.irs.gov/taxtopics/tc152.html>. In New York, recent system improvements have decreased the time that it takes for the New York State Department of Taxation and Finance to issue personal income tax refunds. Generally speaking, roughly 86% of personal income tax refunds are issued within 30 days of the return filing and

TABLE 1, IRS RETURN TIME AVERAGES

Filing/Refund Delivery Options	Average Time to Receive Refund
Paper Return IRS Mailed Check	6-8 weeks
Paper Return IRS Direct Deposit into Taxpayers Bank Account	5-7 weeks
E-Filed Return IRS Mailed Check	15-22 Days
E-Filed Return IRS Direct Deposit into Taxpayers Bank Account	8-15 Days

According to a 2010 tax season time table provided by H&R Block, RAL funds are made available to consumers within 1-2 days. Refund anticipation checks (RAC), which allow consumers to delay paying their tax preparation fees until after they receive their refunds, provide consumers with their refunds in 8-15 days.

TABLE 2, H&R BLOCK RETURN TIME AVERAGES

Filing/Refund Delivery Options	Timing	Tax Preparation Fee Required Up Front?
Paper Return IRS Mailed Check	6-8 weeks	Yes
Paper Return IRS Direct Deposit into Filers Bank Account	5-7 weeks	Yes
E-Filed Return IRS Mailed Check	15-22 Days	Yes
E-Filed Return IRS Direct Deposit into Filers Bank Account	8-15 Days	Yes

approximately 99% are issued within 60 days. Certain factors that are beyond the Tax Department’s control can lengthen these time frames. Examples include fiscal constraints, processibility issues with the return (e.g., incomplete returns or taxpayer errors), and the involvement of a control agency (the Office of the New York State Comptroller) which can delay the issuance of otherwise processed refunds. Refunds that are not issued within these general time frames are typically those that have been pulled for further review/audit.

E-Filed Return Refund Anticipation Check Check or Emerald Card	8-15 Days	No
E-Filed Return Refund Anticipation Loan Check or Emerald Card	Today -2 Days	No
E-Filed Return Refund Anticipation Loan Check or Emerald Card	Within Minutes	No

For consumers who need money sooner than the Internal Revenue Service (IRS) can deliver, banks offer RALs. These loans, between a consumer and a bank, are facilitated through tax preparers. It is against IRS rules for tax preparers to directly make loans based on a tax return that the tax preparer or an affiliate prepared. Tax preparers who offer RALs and other tax refund-related bank products are subject to regulation by federal laws and the Internal Revenue Code.¹⁶ These regulations include basic disclosure requirements, identification requirements, debt collection laws and anti-discrimination laws. These regulations have seemingly not been effective in identifying, in plain language, that the average consumer can comprehend, the true cost of the service being provided. Further, unlike insured depository institutions, tax preparers facilitating RALs have not been subjected to direct federal regulatory supervision.¹⁷

RALs are high interest, short-term loans -- averaging 12 days -- offered to consumers in anticipation of a federal tax refund. Determining the interest rate of a RAL starts from the “interest only” rate and also must include the other fees and costs directly associated with obtaining a RAL.¹⁸ According to H&R Block, in 2010, a standard RAL “interest only” rate ranged from 24% to 33% per annum.¹⁹ Reportedly, adding the 2010 cost of the “dummy” account—an account set up by RAL banks to receive the consumer’s tax refund—at a minimum doubles the interest-only amount.²⁰ For example, the interest rate for a typical RAL of \$3,300 was 72% annually, while the annual interest rates for RALs for amounts under \$1,000 were in the triple digits.²¹ The GAO’s report confirms these APR calculations, noting: “The inclusion of these fees, known as account fees, standard fees, or handling fees, and which are charged to open

¹⁶ See, e.g., Truth in Lending Act (15 U.S.C. §1601); Federal Reserve Board Regulation Z (12 CFR 226.1); Equal Credit Opportunity Act (15 U.S.C. §1691); Federal Reserve Board Regulation B (12 CFR 202.1); Federal Trade Commission Act (15 U.S.C. §45); Fair Credit Reporting Act (15 U.S.C. §1681); Fair Debt Collection Practices Act (15 U.S.C. §1692); USA Patriot Act (Public Law 107-56, Page 115; Stat. 272(2001)); Gramm Leach Bliley Act (Public Law 106-102, Page 113; Stat. 1338 (1999)); John Warner National Defense Authorization Act (H.R. 5122 (2006)); Internal Revenue Code and Regulations (26 U.S.C. §7216); Internal Revenue Service Procedure (2007-40).

¹⁷ H&R Block has indicated that it expressly consents to OCC regulation in its contract with HSBC, and as the agent of HSBC it is subject to OCC oversight and potential enforcement action. H&R Block Bank and its holding company are subject to regulation by the OTS (which will soon be merged into the OCC) for RACs.

¹⁸ This APR calculation methodology was deemed appropriate by the Government Accountability Office in its 2008 report on RALs. See <http://www.gao.gov/new.items/d08800r.pdf>

¹⁹ Tax Preparation Industry Reported Data.

²⁰ Major Changes in the Quick Tax Refund Loan Industry: The NCLC/CFA 2010 Refund Anticipation Loan Report (Feb. 2010).

²¹ *Id.*

Truth in Lending Act because consumers are required to pay the fee in connection with obtaining RALs and do not have the option of using existing accounts to obtain their tax refunds.”²²

The industry asserts and consumer advocacy groups have also noted that RAL interest rates and associated bank fees have substantially decreased over the last few years. Since these are bank loans, lenders associated with federally chartered banks and their subsidiaries are able to “import” the interest rates from their home state—e.g., South Dakota or Delaware—which can exceed state usury rates. It appears that RAL lenders generally have been associated with either a national bank or a State chartered bank. Thus, the State is preempted from enacting an interest rate cap. However, the State has mandated strict RAL disclosure laws in 2008 and again in 2009. It should be noted that the State is not precluded from advocating for the repeal of federal banking preemptions or the implementation of a national usury rate via a Legislative Resolution in support submitted to Congress.

While the bank fees and interest rates have been lowered in recent years, prior to Chapter 59 of the Laws of 2009, some tax preparers were charging non-bank fees which greatly increased the cost of a RAL for consumers. These fees were listed as; “application,” “administrative,” “e-filing,” “service bureau,” “transmission,” or “processing” fees. In some cases these fees doubled the cost of RALs for consumers. Since these were non-bank fees, federal preemption did not prevent the State from banning these fees by adding a new section 32 to the Tax Law pursuant to Chapter 59 of the Laws of 2009, which reads as follows:

Tax Law § 32. Registration of tax return preparers. (f) (1) A tax return preparer or facilitator shall not: (A) charge or impose any fee charge or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provided the loan or check; (B) Engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation check or a refund anticipation loan, including making any oral statements contradicting any of the information required to be disclosed under the Taxpayer Bill of Rights as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law; (C) Directly or indirectly arrange for a third party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check; (D) Include any of the following provisions in any documents provided or signed to obtain a refund anticipation loan or refund anticipation check, including the loan application or agreement: (i) a hold harmless clause; (ii) a confession of judgment clause; (iii) a waiver of the right to a jury trial; (iv) any assignment of or order for payment of wages or other compensation for services; (v) a waiver of any provision of the Taxpayer Bill of Rights, as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law; or (vi) a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class wide basis. Any aforementioned waivers shall be deemed null, void and of no effect; (E) Take or arrange for a creditor to take a security interest in any property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a refund anticipation loan; (F) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee; (G) Refer, facilitate, solicit consumers or conduct business on behalf of, in conjunction with or on the same premises as a third party

²² <http://www.gao.gov/new.items/d08800r.pdf>

engaged in check cashing for a fee; (H) Make a misrepresentation of fact in obtaining or attempting to obtain a registration; or (I) Engage in any other action prohibited by rules promulgated by the commissioner. (2) If a tax return preparer violates any one of the provisions provided for in this subdivision, then the tax return preparer must pay a penalty of five hundred dollars for each such violation, in addition to any other penalties provided for in this section.

Despite these new fee- prohibiting laws, a recent National Consumer Law Center Secret Shopper report found that many tax preparers may not be following them. With respect to Liberty Tax Service and Jackson-Hewitt Tax Service franchisees the report states:

Because most testers did not actually take out RALs or RACs, it was difficult to tell whether there were violations of the prohibition against add-on fees. At Jackson Hewitt, the franchise charged both a \$11.95 technology fee and a mysterious \$10 fee for a RAC. The \$11.95 technology fee was paid to MetaBank so did not technically violate New York State law. Another Jackson Hewitt franchise charged a \$16 data and document storage fee to a tester who did not receive a RAL or RAC, even though that fee is usually associated with those products. A Liberty Tax Service franchise indicated that it would charge an extra \$10 fee for a RAL (which ultimately the tester did not take out), but it was unclear whether this fee was actually charged by the lending bank, which would not violate the New York State law.²³

Thus, at the very least, the implementation of the laws banning fees is confusing and unclear to consumers interested in engaging such services.

Recent action to curb RALs has been taken by the IRS. Currently, tax preparers who electronically submit a client's tax return receive in the acknowledgment file an indication of whether an individual taxpayer will have any portion of the refund offset for delinquent tax or other debts, such as unpaid child support or delinquent federally funded student loans. This acknowledgment is known as the debt indicator, and is used as an underwriting tool for RALs. In August 2010, IRS Commissioner Doug Shulman announced that the IRS is eliminating the use of the debt indicator for the 2010 filing season, deeming it unnecessary given that consumers who e-file with direct deposit can receive their refund within 10 days.²⁴ While consumer groups have applauded the measure,²⁵ H&R Block, Jackson-Hewitt Tax Service and Liberty Tax Service have all opposed this change and have asserted that it will lead to increased costs and reduced lines of credit for RAL consumers.²⁶

²³ *Tax Preparers Out of Compliance: Mystery Shopping Testing Exposes Violations of Refund Anticipation Loan Laws in Arkansas, New York and North Carolina*, National Consumer Law Center, April 2010. See: http://www.nclc.org/images/pdf/high_cost_small_loans/ral/mystery_ral_report.pdf

²⁴ <http://www.irs.gov/newsroom/article/0..id=226310.00.html>

²⁵ [http://consumerfed.org/elements/www.consumerfed.org/File/Final%20RAL%20IRS%20Debt%20Indicator%20Press%20Release%20\(3\).pdf](http://consumerfed.org/elements/www.consumerfed.org/File/Final%20RAL%20IRS%20Debt%20Indicator%20Press%20Release%20(3).pdf)

²⁶ <http://www.marketwire.com/press-release/HR-Block-Responds-to-IRS-Elimination-of-the-Debt-Indicator-NYSE-HRB-1300878.htm>

Other refund related products include refund anticipation checks (RACs). RACs are not loans. Rather, they are a tax refund payment mechanism whereby the tax refund is paid to a deposit account not owned or opened by the taxpayer, from which the balance of a tax refund is paid to the taxpayer after the preparer's tax preparation and service fees are deducted. This mechanism allows taxpayers to delay paying their tax preparation fees until they receive their tax refunds. For those that do not have bank accounts, RACs offer a shorter waiting period for their refund compared to an I.R.S. mailed refund check. With a RAC, the tax refund is paid directly to a deposit account from which the bank deducts tax preparation and service fees, and then makes the funds available to the consumer via direct deposit to a bank account, debit card, or by check.²⁷

Recent changes in New York State law have sought to provide stronger consumer protections for taxpayers who utilize RALs and RACs. Included in these changes were provisions regarding RAL and RAC disclosures. Chapter 372 of the Laws of 2008 established the "Consumer Bill of Rights Regarding Tax Preparers" in the General Business Law. This law directs the Department of Taxation and Finance (DTF) to work with the State's Consumer Protection Board (CPB) to provide the "Bill of Rights" informational brochures to consumers through tax preparers, agency outreach and education events, and on DTF's internet websites. This brochure is designed to inform taxpayers of their rights when seeking tax preparation services and refund-related loan products. The law also provides for notification and posting requirements, with civil penalties imposed for non-compliance.

While the State "Bill of Rights" law is not in effect within New York City (NYC), the City has its own similar provisions in law, which predated the State law and is administered by the City's Department of Consumer Affairs.

Looking to further strengthen the law and clarify terms with respect to RALs and RACs consumer disclosure, Governor Paterson amended the General Business Law and adopted much of the Model Refund Anticipation Loan Act, developed by the National Consumer Law Center into New York, in the 2009-2010 Executive Budget proposal. The Legislature supported this measure and Chapter 59 of the Laws of 2009, which requires the registration of tax preparers, was enacted.

Enforcement

The NYC Department of Consumer Affairs (DCA) has a program in place to police preparers in the City. This program includes enforcement of the City's Taxpayer Bill of Rights, which served as the model for the State's Taxpayer Bill of Rights for Tax Preparers (as noted above the State law does not apply to preparers within NYC). Complaints regarding tax preparers outside of the City are referred to the DTF's Criminal Investigations Division, which makes a determination as to whether the case should be referred to the New York State Attorney General's Office. Beyond DCA's enforcement of New York City law, there appears to be little

²⁷ The utility of RACs in covering the upfront cost of tax preparation may be diminished in the future. The IRS plans to explore the possibility of providing a new tool for the 2012 tax filing season to give taxpayers a mechanism to use an appropriate portion of their tax refund to pay for the services of a professional tax return preparer. *See* <http://www.irs.gov/newsroom/article/0,,id=226310,00.html>

enforcement of State laws governing preparers who offer RALs and RACs. In particular, we understand that there are currently no DTF field personnel devoted to enforcement against tax preparers for violations of the Taxpayer Bill of Rights for Tax Preparers. Given resource and other limitations, enforcement against preparers at the State level is currently limited to investigations of suspected tax fraud and criminal conduct (e.g. preparers who assist taxpayers in preparing fraudulent returns).

An enforcement presence that imposes the financial penalties implemented in 2008 may deter tax preparers who violate the law. Such actionable violations in the GBL include, but are not limited to, not posting the Consumer Bill of Rights, not providing the consumer with a copy of the Consumer Bill of Rights prior to service engagement, representing loans as refunds, and not providing the required written RAL or RAC disclosure documents to consumers prior to any such service engagements.

Outreach & Education

In 2008 and again in 2009, DTF developed pursuant to GBL section 372, the “Consumer Bill of Rights Regarding Tax Preparers.” The most recent and updated “Bill of Rights” (DTF Publication 135, 10/09) remains available for download in English and Spanish for both tax preparers and consumers at the DTF and CPB websites. This publication is also made available at various DTF and CPB outreach events.

While the “Bill of Rights” is an affirmative step forward in advising consumers of their rights in this area, it does not have the effect of a real educational tool that so many of the consumers who consume these products need to truly understand the effects of choosing a RAL or RAC, and other alternatives available to them.

Conclusion

In addition to the aforementioned issues, the Working Group also examined the ability of the State to impose an interest rate cap or an outright ban on RALs. At this juncture, we have concluded that the State is likely preempted from taking any such actions because RALs are mainly offered by federally-chartered banks and their subsidiaries, which are federally regulated and do not have any usury rate impositions depending on their “home” state. The new federal Consumer Financial Protection Act enacted on July 21, 2010, grants the States more authority to impose consumer protections, but the exact nature and scope of the additional authority is unclear. Additionally, after much discussion, the Working Group was divided on recommending that the Legislature adopt a resolution to be submitted to Congress in support of eliminating RALs or capping RAL interest rates nationally. Accordingly, we propose this as an area for further study and analysis.

Post Script

There have been a number of significant changes since the RAL/RAC Working Group began its task of “examining issues and abuses involving refund anticipation loans and checks.” In April 2010, J.P. Morgan Chase, one of the three largest lenders underwriting refund anticipation loans, ceased underwriting RALs. In August 2010, the IRS announced it would no longer provide tax preparers and financial institutions a key credit check on taxpayers for RALs. After receiving a directive from the Office of the Comptroller of Currency, HSBC terminated its agreement to underwrite RALs with H&R Block in December 2010.

Thus, we understand that in 2011 there have been only three community banks, Republic Bank & Trust, River City Bank and Ohio Valley Bank, engaged in originating RALs. However on February 10, 2011, Republic, which we understood to have been the lending partner for Liberty Tax and Jackson Hewitt, announced in its Security Exchange Commission (SEC) filing that the Federal Deposit Insurance Corporation (FDIC) decided that RALs are unsafe and unsound loan products. The FDIC finding was based upon the termination of the IRS debt indicator in August 2010. Republic’s SEC filing notes that the bank has 60 days to request an Administrative Hearing and could ultimately appeal the FDIC’s action in federal court.²⁸

Subsequently, Ohio Valley and River City announced plans to exit the RAL market at the end of the 2011 tax season.²⁹ In an effort to address this concern, the Treasury Department in January launched a pilot program offering prepaid cards with lower fee structures than existing products have. The Treasury Department offered 600,000 taxpayers making less than \$35,000 the opportunity to sign up and aims to expand the offer in coming years.³⁰

²⁸ *Consumer Advocates Applaud FDIC Action Against Unsafe and Unsound Refund Anticipation Loans*, National Consumer Law Center and Consumer Federation of American; C.C. Wu, J.A. Fox & P. Skillern (February 11, 2011).

²⁹ *End of the RALs?*, Washington Post, Douglas, Danielle (March 27, 2011).

³⁰ *Id.*

Recommendations as to RALs and RACs

For the reasons set forth in the report of the Working Group on RALs and RACs, the Task Force recommends adoption of the following measures:

Enforcement

- Provide an appropriation for enforcement by the Department of Taxation and Finance of the provisions of the Tax Law and General Business Law regarding RALs and RACs. It has been suggested that the registration fees now being collected by DTF from preparers could fund enforcement efforts. However, revenue from this program has been minimal and further diminished by a recent law that removed enrolled agents and their employees from the requirement to register.
- Achieve better coordination between State enforcement personnel and New York City regarding the State's enforcement strategy.
- Notify RAL lender banks and federal regulators of tax preparers who violate State and City law with respect to RALs and RACs.
- Publicize names of chronic violators of State law and make these available on appropriate State government websites, including those of DTF and the Department of State Division of Consumer Protection.

Outreach & Education

- The State's DTF, Department of State Division of Consumer Protection (DCP), and Department of Financial Services (DFS) should collaborate to develop an educational brochure that gives clear examples of the cost of choosing a RAL or a RAC, using fact patterns and real numbers that relate to the average RAL or RAC consumer.
- The educational brochure should include Volunteer Income Tax Assistance (VITA) income threshold information and contact information.
- The State's DTF, DCP and DFS could collaborate to develop an outreach program to run during tax season, which could be used by such agencies for outreach and forwarded to other State agencies to be used in conjunction with other outreach and educational activities scheduled during this period. The State Office for the Aging, Office for Temporary and Disability Assistance (OTDA), and the Department of Labor are just a few Agencies that may be interested in providing this important information to their constituencies during tax season.

APPENDIX A

The Task Force Mandate

“The commissioner of taxation and finance shall convene a task force consisting of representatives from the department of taxation and finance, the state education department, the department of state, the consumer protection board, the banking department, the office of temporary and disability assistance, the New York state bar, the New York state association of certified public accountants, enrolled agents with the internal revenue service, and other representatives of the tax return preparation industry in order to prepare a report addressing the following issues: determining the appropriate scope of the program for regulating tax return preparers and commercial tax return preparers; setting appropriate qualifications, including, but not limited to, minimum educational qualifications and continuing educational requirements for tax return preparers; examining issues and abuses involving refund anticipation loans and checks and considering any other matters the task force determines to be necessary or appropriate. The report required by this section will be submitted to the commissioner of taxation and finance, the governor, the speaker of the assembly and the temporary president of the senate no later than March 31, 2012. The commissioner of taxation and finance may promulgate regulations to implement any of the recommendations made by the task force.”

Laws of 2009, chapter 59, Part VV, §4.

APPENDIX B

Statistics from the New York State Tax Preparer Registration Program

The tax preparer registration program began in the Fall of 2009 for the 2010 tax filing season. As noted in Table B-1, there were a total of 63,067 registrations. Over one quarter of these registrations (16,204 or 25.7 percent) were for tax return preparers. The vast majority – 44,460 (70.5 percent) – were both tax return preparers and RAL/RAC facilitators. The remaining 2,403 registrations were solely for RAL/RAC facilitators.

Table B-1: Registrations by Type

Type	Number	Percent
Preparer	16,204	25.7
RAL/RAC Facilitator	2,403	3.8
Preparer/Facilitator	44,460	70.5
Total	63,067	100.0

Notes: Totals may not add due to rounding.

As Table B-2 shows, approximately 32 percent (20,099) of all registrations were for New York State based persons. The distribution of registrations by type differed somewhat from the overall registration breakdown. New York registrants were comprised of 41 percent (8,240) tax return preparers, 55.5 percent both tax return preparers and RAL/RAC facilitators, and 3.5 percent (713) were solely RAL/RAC facilitators.

Table B-2: New York Registrations by Type

Type	Number	Percent
Preparer	8,240	41.0
RAL/RAC Facilitator	713	3.5
Preparer/Facilitator	11,146	55.5
Total	20,099	100.0

Notes: Totals may not add due to rounding.

Table B-3 shows the distribution of non-New York registrations by type. The share of facilitators was very similar to that of New York registrants – 3.9 percent versus 3.5 percent, respectively. However, a larger share registered as both tax preparers and facilitators (77.5 percent) compared to New York registrants (55.5 percent). Consequently the share of those registrants registering solely as tax preparers was less for non-New York registrants (18.5 percent versus 41.0 percent).

Table B-3: Non-New York Registrations by Type

Type	Number	Percent
Preparer	7,964	18.5
RAL/RAC Facilitator	1,690	3.9
Preparer/Facilitator	33,314	77.5
Total	42,968	100.0

Notes: Totals may not add due to rounding.

The location of non-New York State registrants varies, but, as expected, is largely concentrated in neighboring states and states with large numbers of former New York residents, including retirees. As previously noted, there were a total of 42,968 non-New York registrants. Table B-4 shows that Pennsylvania had the largest share of non-New York registrants at 13.7 percent. New Jersey was second at 12.6 percent. Florida was third at 9.7 percent.

Table B-4: Top Ten Non-New York Registrations by State

State	Preparers	RAL/RAC Facilitators	Both	Total ¹	Percent ²
Pennsylvania	773	122	4,977	5,872	13.7
New Jersey	1,339	112	3,952	5,403	12.6
Florida	759	239	3,187	4,185	9.7
California	953	48	1,846	2,847	6.6
North Carolina	288	88	1,684	2,060	4.8
Connecticut	459	31	1,561	2,051	4.8
Texas	158	67	1,523	1,748	4.1
Georgia	273	104	1,228	1,605	3.7
Virginia	255	49	1,201	1,505	3.5
Massachusetts	407	31	687	1,125	2.6
South Carolina	89	118	787	994	2.3
Illinois	182	39	718	939	2.2
Ohio	137	44	735	916	2.1
Maryland	164	26	675	865	2.0
Arizona	113	26	692	831	1.9

Notes:

¹All told these 15 states accounted for some 76.6 percent of the 42,968 registrants with non-New York addresses. In addition, some 43 additional registrants reported addresses in other countries.

²Calculated as a percentage of the total 42,968 non-New York registrants.

In addition to the registrants from other states, there were a total of 43 registrants from other nations. The most common non-US registrants were from Canada (9 registrants), the United Kingdom (8), Switzerland (4) and Japan (4).

Table B-5A shows the type of registrants and whether or not they paid the \$100 registration fee. RAL/RAC facilitators never pay the registration fee. Tax return preparers must register if they prepare at least one return for compensation in a calendar year, but only *commercial tax return preparers* who prepare ten or more returns for compensation in the preceding year or will do so in the current year must electronically pay an annual fee of \$100. All told, some 20,252 registrants of a total 63,067 registrants (or 32.1 percent) paid the fee. Some 9,910 (48.9 percent) of these registrants were tax return preparers and 10,342 (51.1 percent) were both tax return preparers and RAL/RAC facilitators. Again, it is important to remember that RAL/RAC facilitators never pay the registration fee.

Table B-5A: Fee Payments by Registration Type (Fee Percent)

Registration Type	Fee Paid	Column Percent	No Fee Paid	Column Percent	Total	Column Percent
Preparer	9,910	48.9%	6,294	14.7%	16,204	25.7%
RAL/RAC Facilitator ¹	0	0.0%	2,403	5.6%	2,403	3.8%
Preparer/Facilitator	10,342	51.1%	34,118	79.7%	44,460	70.5%
Total	20,252	100.0%	42,815	100.0%	63,067	100.0%

Notes: Totals may not add due to rounding.

¹RAL/RAC Facilitators by definition are not required to pay the registration fee.

Table B-5B presents the same data as 5A, but shows the percentages of each type of registration who paid the fee. Contrasting to Table B-5A, tax preparers represented 48.9 percent of those paying a fee (5A), but 61.2 percent of all tax preparers paid the fee (5B). Those individuals who registered as both tax return preparers and RAL/RAC facilitators were 51.1 percent of those paying fees (B-5A), but only 23.3 percent of these individuals paid the fee (B-5B).

Table B-5B: Fee Payments by Registrations Type (Registration Percent)

Registration Type	Fee Paid	Row Percent	No Fee Paid	Row Percent	Total	Row Percent
Preparer	9,910	61.2%	6,294	38.8%	16,204	100.0%
RAL/RAC Facilitator ¹	0	0.0%	2,403	100.0%	2,403	100.0%
Preparer/Facilitator	10,342	23.3%	34,118	76.7%	44,460	100.0%
Total	20,252	32.1%	42,815	67.9%	63,067	100.0%

Notes: Totals may not add due to rounding.

¹RAL/RAC Facilitators by definition are not required to pay the registration fee.

Table B-6 breaks down the numbers of registrants making payments – and not making payments – by the type of registration and location. Again, RAL/RAC facilitators never pay the registration fee. The large majority – 16,109 or 79.6 percent -- of those paying the fee were New York based individuals (7,608 tax preparers and 8,501 both tax preparers and RAL/RAC facilitators).

Table B-6: Fee Payments by Registrations Type & Location

Registration Type	Fee Paid	Percent	No Fee Paid	Percent	Total	Percent
Preparer	9,910	48.9%	6,294	14.7%	16,204	25.7%
New York	7,608	37.6%	632	1.5%	8,240	13.1%
Out of State	2,302	11.4%	5,662	13.2%	7,964	12.6%
RAL/RAC Facilitator¹	0	0.0%	2,403	5.6%	2,403	3.8%
New York	0	0.0%	713	1.7%	713	1.1%
Out of State	0	0.0%	1,690	3.9%	1,690	2.7%
Preparer/Facilitator	10,342	51.1%	34,118	79.7%	44,460	70.5%
New York	8,501	42.0%	2,645	6.2%	11,146	17.7%
Out of State	1,841	9.1%	31,473	73.5%	33,314	52.8%
Total	20,252	100.0%	42,815	100.0%	63,067	100.0%

Notes: Totals may not add due to rounding.

¹RAL/RAC Facilitators by definition are not required to pay the registration fee.

Table B-7 shows professional designations, if any, reported by registrants. Several things should be considered when reviewing these data. First, when the registration program first began (November 2009), attorneys, public accountants (PAs) and certified public accountants (CPAs) were excluded from the definition of tax return preparer, but only if they were registered or licensed in New York State.

Second, attorneys, PAs and CPAs not licensed by New York State were initially required to register and, if they qualified as commercial tax return preparers, pay the \$100 registration fee. However, Chapter 503 of 2009, effective December 4, 2009, amended the statute to exempt from registration any of these individuals who were registered or licensed by any state in the United States. Nevertheless, any of these professionals who were also RAL/RAC facilitators would continue to be required to register, although not pay the fee. Another group of professionals - Enrolled Agents (EAs) - were not exempted until the enactment of Chapter 242 of the Laws of 2010.³¹

Table B-7: Registrations by Professional Designation & Fee Paid

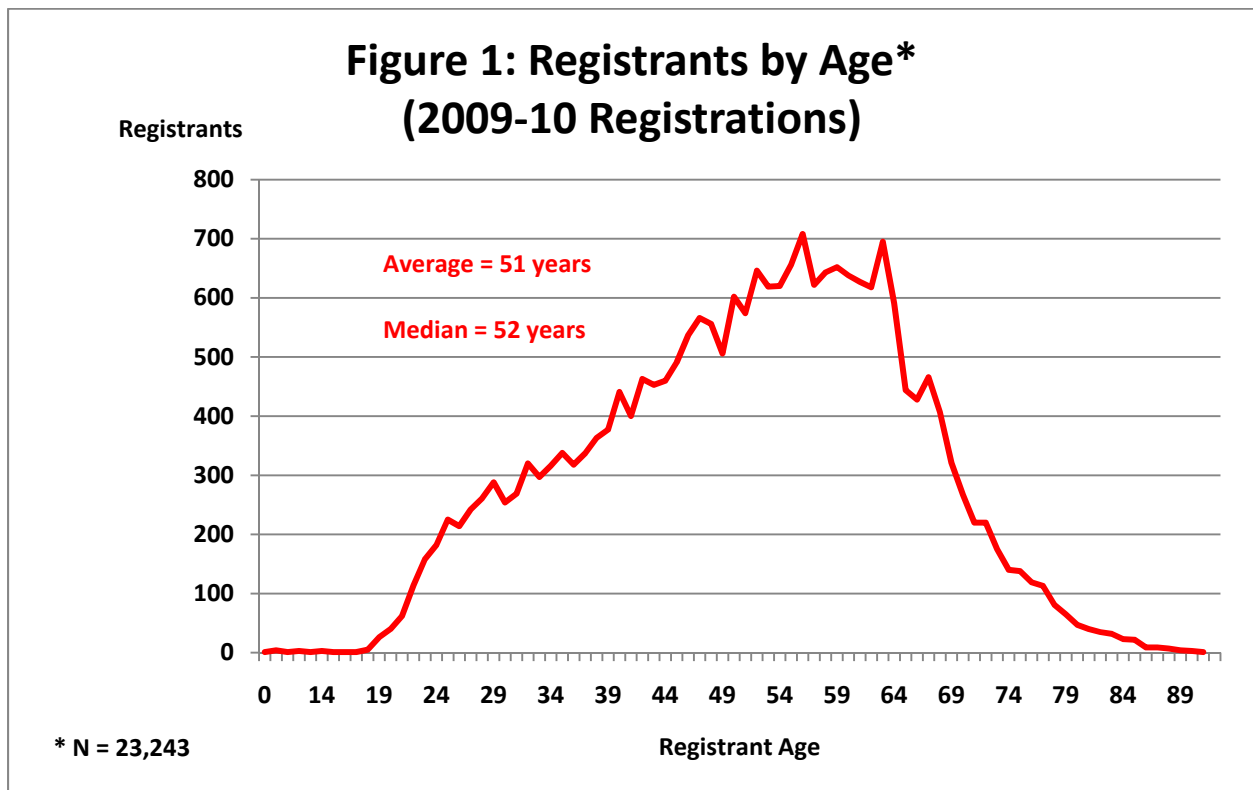
	Prof. Designation		Fee Paid	
	Number	Percent	Number	Percent
CPAs/PAs	1,296	2.1	324	1.6
New York	234	0.4	0	0.0
Out of State	1,062	1.7	324	1.6
Attorneys	145	0.2	23	0.1
New York	32	0.1	0	0.0
Out of State	113	0.2	23	0.1
Enrolled Agents (EAs)	7,966	12.6	2,828	14.0
New York	2,008	3.2	1,881	9.3
Out of State	5,958	9.4	947	4.7
No Designation Reported	53,660	85.1	17,077	84.3
New York	17,825	28.3	14,228	70.3
Out of State	35,835	56.8	2,849	14.1
Total	63,067	100.0	20,252	100.0

Notes: Totals may not add due to rounding.

³¹This legislation was effective July 30, 2010 and did not provide for refunds of fees previously paid by these individuals.

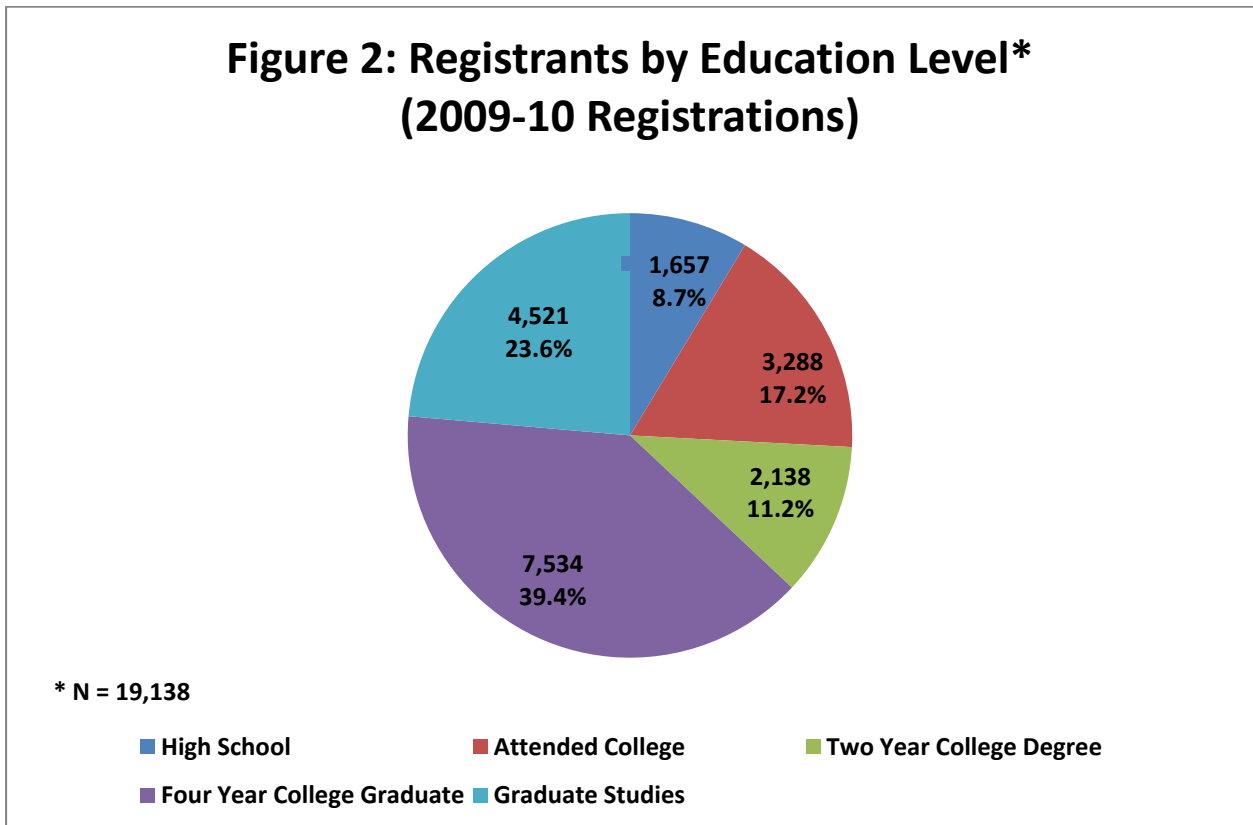
A total of 1,296 CPAs/PAs registered during the initial registration season. As expected, the majority of these (1,062) were out of state professionals. Some 324 of these individuals paid the \$100 fee. Similarly, a total of 145 attorneys registered. Again, the majority of these professionals (113) were out of state professionals. Twenty-three of this group paid the registration fee. A total of 7,966 EAs registered (2,008 New York and 5,958 out of state). A third (2,828) of these registrants paid the registration fee. About a third of the EAs who paid the fee were from out of state.

Registrants were also asked various demographic and training/experience questions as part of the registration process. Registrants were not required to answer these questions and, therefore, many registrants did not provide responses. However, the responses of those individuals provide some insight on the registrant population. Figure 1 shows a distribution of registrant age. The average age was 51 and the median age was 52. Approximately 37 percent (23,243 of 63,067) of registrants answered this question.

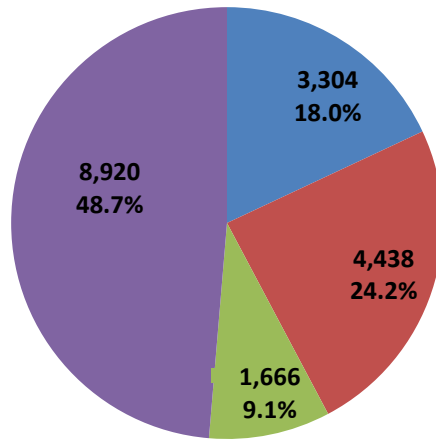


Registrants were also asked about their highest level of completed formal education. Figure 2 shows the distribution of answers to this question. The largest share of respondents (39.4 percent) was made up of four year college graduates. An additional sizable share (23.6 percent) had at least some graduate study. Only a very small proportion of respondents had only a high school education (8.7 percent). The remaining registrants reported they had some college (17.2 percent) and a two year college degree (11.2 percent). However, all told, only approximately 30 percent (19,138 of 63,067) of registrants responded to this question.

An additional question asked registrants to report how many college credits in accounting they had taken. Figure 3 shows the responses to this question. Close to a majority of respondents to this question (48.7 percent) reported they had taken more than 18 college credits in accounting and 9.1 percent had taken 13-18 credits. Almost a quarter of respondents (24.2 percent) reported 1-12 credits and 18 percent no credits. Some 29 percent (18,328 of 63,067) of registrants responded to this question.



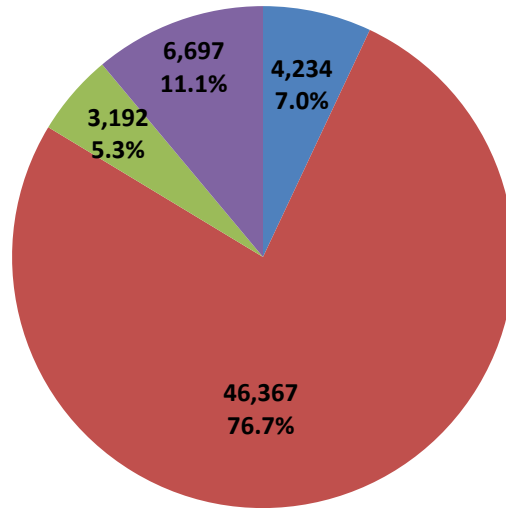
**Figure 3: Registrants by College Accounting Credits*
(2009-10 Registrations)**



* N = 18,328 ■ None ■ 1-12 Credits ■ 13-18 Credits ■ More Than 18 Credits

Finally, almost all registrants responded to a question asking how many hours of tax preparation training they had received in the prior 12 months (60,490 of 63,067 registrants). Figure 4 reveals that the overwhelming majority (76.7 percent) of registrants who responded to this question had reported receiving from 11-39 hours in the prior 12 months. While only 7.0 percent reported 10 hours or less, 5.3 percent reported 40-59 hours and 11.1 percent reported 60 hours or more of training.

**Figure 4: Registrants by Hours of Tax Preparation Training in Prior 12 Months*
(2009-10 Registrations)**



* N = 60,490

■ 10 or less ■ 11-39 ■ 40 - 59 ■ 60 or greater

APPENDIX C

Participants and Acknowledgements

The New York State Task Force on Regulation of Tax Preparers, established by the 2009 budget provision set forth in Appendix A, included representation from a variety of relevant public and private sector entities and professions. A list of participants and their affiliations follows. Not all those listed were able to participate through the entire process, and some participants changed affiliations during the process. Italics indicate former affiliations.

Inclusion of affiliations should not be taken to mean that a represented entity agrees with all or any of the contents of this Report, and in some cases, the participants joined the entity listed as their primary affiliation only subsequent to their participation. The Report includes consensus views of participants in the Task Force, but individual participants, and the entities with which they were affiliated, may disagree with particular recommendations or other contents of the Report.

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Italics indicate former affiliations.

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Italics indicate former affiliations.

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Paula J. O'Brien (to whom special thanks are due for her excellent drafting work)	
Penney Vachirapapun	

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Nina Olson	Taxpayer Advocate, Internal Revenue Service
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Josh Zinner	Neighborhood Economic Development Advocacy Project

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James Berney	Taffy Gray	Deborah Nickles
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Italics indicate former affiliations.